



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 12, 1998

Ms. Linda Wiegman
Supervising Attorney
Office of General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR98-1908

Dear Ms. Wiegman:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 117193.

The Texas Department of Health (the "department") received a request for records pertaining to the Alice P & S Hospital in Alice, Texas. You assert that some of the documents requested are confidential pursuant to section 552.101 of the Government Code in conjunction with various provisions of state and federal law. You submitted to this office for review copies of the records at issue, marked to show the exceptions asserted by the department.

You contend that certain identifying information is confidential on the basis of common-law privacy as protected under section 552.101 of the Government Code. Section 552.101 of the Government Code provides an exception from required public disclosure for information that is made confidential by law. Information must be withheld from public disclosure under a common-law right of privacy when the information is (1) highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); Open Records Decision No. 611 at 1 (1992). In Open Records Decision No. 262 (1980), this office stated that information about a patient's injury or illness might be protected under common-law privacy if such injury or illness relates to drug overdoses, acute alcohol intoxication, gynecological or obstetrical illnesses, convulsions and seizures, or emotional and

mental distress. *See also* Open Records Decision No. 539 at 5 (1990) (information concerning emotional state may be protected by common-law privacy). However, an individual's right of common-law privacy is a personal right that does not extend past that individual's own death. Attorney General Opinion H-917 (1976); Open Records Decision No. 272 at 1 (1981). We have marked the information that must be withheld from disclosure on the basis of common-law privacy.

You marked documents that you contend must be withheld from disclosure under section 611.002 of the Health and Safety Code and section 5.08 of Vernon's Texas Civil Statutes article 4495b, the Medical Practice Act (the "MPA"). Chapter 611 of the Health and Safety Code provides for the confidentiality of records created or maintained by a mental health professional. Section 611.002(a) reads as follows:

Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

Section 611.001 defines a "professional" as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals. *See* Open Records Decision No. 565 (1990).

Section 5.08 of the MPA provides:

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

(c) Any person who receives information from confidential communications or records as described in this section other than the persons listed in Subsection (h) of this section who are acting on the patient's behalf may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Section 5.08(j)(3) also requires that any subsequent release of medical records be consistent with the purposes for which a governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Thus, access to the medical records at issue is not governed by chapter 552 of the Government Code, but rather provisions of the MPA. Open Records Decision No. 598 (1991). Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See* V.T.C.S. art. 4495b, § 5.08(a), (b), (c), (j); Open Records Decision No. 598 (1991).

We have reviewed the records that you marked as protected under sections 5.08 and 611.002. We agree that these records are confidential. We note that the mental health records may be released only as provided under chapter 611 of the Health and Safety Code, and the other medical records at issue may be released only as provided under the MPA.

You marked the minutes of a committee meeting as protected from disclosure under section 161.032(a) of the Health and Safety Code, which provides that "records and proceedings of a medical committee are confidential and are not subject to court subpoena." Section 161.031 of the Health and Safety Code defines medical committee as follows:

(a) In this subchapter, "medical committee" includes any committee, including a joint committee, of:

(1) a hospital;

(2) a medical organization;

(3) a university medical school or health science center;

(4) a health maintenance organization licensed under the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code), including an independent practice association or other physician association whose committee or joint committee is a condition of contract with the health maintenance organization; or

(5) an extended care facility.

(b) The term includes a committee appointed ad hoc to conduct a specific investigation or established under state or federal law or rule or under the bylaws or rules of the organization or institution.

Assuming that the Senior Care Management Team Committee is a medical committee as defined above, we agree that the minutes of the committee are confidential. *Barnes v. Whittington*, 751 S.W.2d 493, 496 (Tex. 1988).

You also assert that social security numbers listed in applications are protected from disclosure under section 552.101 of the Government Code in conjunction with 42 U.S.C. § 405(c)(2)(C)(viii)(I). If these social security numbers were obtained or maintained by a governmental body pursuant to any provision of law, enacted on or after October 1, 1990, we agree they are confidential pursuant to section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code. Open Records Decision No. 622 (1994).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts

presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Ruth H. Soucy', written in a cursive style.

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 117193

Enclosures: Submitted documents

cc: Ms. Libby James
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(w/o enclosures)